79-1798

Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

October Term, 1979

JEROME C. BLAIR - - - - - Petitioner

versus No. 79-1795

COMMONWEALTH OF KENTUCKY - Respondent

RICHARD CARPENTER and
STEPHEN BORDERS - - - - Petitioners

versus No. 79-534

COMMONWEALTH OF KENTUCKY - Respondent

On Petition for Writ of Certiorari to the
Supreme Court of Kentucky

RESPONDENT'S BRIEF IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

RESPONDENTS BRIEF IN OPPOSITION

OPINIONS BELOW

As set out in petitioners' Petition and attached thereto in Appendix.

JURISDICTION

All petitioners assert jurisdiction pursuant to 28 U.S.C. Section 1257(3). However, Supreme Court Rule 19(1)(a) authorizes a review on writ of certiorari "Where a state court has decided a federal question of substance . . . or has decided it in a way probably not in accord with applicable decisions of this court."

It should be noted from the petitioners' appendices that the Supreme Court of Kentucky (Decision, November 20, 1979, Rehearing Decision, February 12, 1980) did not address the federal constitutional question, but decided the issue on state procedural law only. On that basis, respondent asserts that no federal question is applicable to which this Court should assume jurisdiction.

QUESTIONS PRESENTED

I.

Whether the Facts Have Mooted the Issues as They Apply to Petitioner Blair.

II.

Whether Kentucky Law Requiring a Motion for a Directed Verdict in Order to Review a Claim of Insufficiency of Evidence to Convict Violates the Constitution of the United States.

III.

Whether There *Was* Sufficient Evidence to Convict.

CONSTITUTIONAL PROVISIONS

As set out in the petition.

STATEMENT OF THE CASE AND FACTS

Petitioner, Jerome C. Blair, was tried together with Richard Carpenter and Stephen Borders in the Jefferson Circuit Court (Louisville, Kentucky) on a 12 count indictment, including first-degree assault (KRS

508.010) wanton endangerment (KRS 508.060), third-degree criminal mischief (KRS 512.040) and first-degree criminal mischief (KRS 512.020). The trial court dismissed some of the counts and the jury found all three defendants not guilty of one count. All three were found guilty of wanton endangerment and criminal mischief, third-degree. The total sentences of each defendant is one year in the penitentiary. Blair, after his appeal was decided by the Kentucky Court of Appeals, voluntarily entered prison, was discharged by parole December 17, 1979. His maximum expiration date of sentence is July 8, 1980 (and may have expired by the time the petition is reviewed by this Court). See attached certified record of the Kentucky Bureau of Corrections, Department of Justice. Carpenter and Borders are still free on bond pending determination of their petition in this Court.

All three petitioners appealed to the Kentucky Court of Appeals. That Court originally issued a single opinion reversing the convictions on the basis of insufficient evidence. (Petitioner's Appendix A.) On petition for rehearing, that Court withdrew the original opinion and issued a new opinion containing a majority opinion, a concurring opinion and a dissenting opinion (Petitioner's Appendix B.) The Commonwealth moved for discretionary review in the Supreme Court of Kentucky (similar to certiorari in this Court), which was granted. That Court issued an unpublished opinion affirming as to Carpenter and Borders and reversing as to Blair (Petitioner's Appendix C), but on Petition for Rehearing, withdrew

its original opinion and reversed as to all defendants (Petitioner's Appendix D). As a result of the last opinion, all three defendants now stand convicted per the original circuit court judgment and all three have filed petitions for writs of certiorari in this Court.

FACTS

In the early morning hours of March 30-31, 1976, two restaurants and bars in Louisville's West End known as Slim's Grill and Club Cobra were peppered with gunfire from a moving car. A waitress in Slim's Grill was seriously injured by the gunfire, sustaining brain damage and blindness. Several vehicles parked in the general area and a liquor store were riddled by gunfire, also. Blair, Carpenter, and Borders were three Louisville Police Officers who were off duty during the night in question.

Police officers investigated the shootings. A Sergeant Pete Giuchici, while investigating the Slim's Grill shooting, received a radio call of another shooting at Club Cobra. He headed in the direction of the Club Cobra, having been told by bystanders that shooting was then going on in the westerly direction. He spotted a car driving with its headlights off. He blocked its path and upon approaching the vehicle heard a front seat passenger say, "What's up, Pete?" He identified the voice as that of Blair. Two other unidentified white males were in the vehicle and there was a shotgun in the car. He believed they seemed familiar and were police officers, but he could not posi-

tively identify them. Considering the incident odd, he reported it to his superiors and an internal police investigation was begun. Also, the Louisville Homicide Squad was investigating.

Found at the scene of one of the bars where the shooting occurred were two spent shotgun shells. One of the shells was retained by Sergeant Giuchici but not marked or preserved for evidence. He placed the shell in his desk or cabinet. According to him, it later disappeared and was never recovered. The other shell had been properly marked and turned over to the members of the homicide detail.

In the meantime, police sought to question Blair re his appearance in the West End during that night (while off duty). He agreed to meet with investigators at his attorney's office. When the police appeared at the attorney's office to question him, they noted Blair's car in the parking lot. The car appeared to be of similar color and description given out by bystanders who glimpsed the vehicle from which the shots emanated.

A Sergeant Browder investigated the case. Blair had told him that he, Blair, had a legitimate reason for being in the West End of Louisville. Blair's car was tested by a Harrison-Gilroy test for gunpowder residue. The expert indicated evidence of lead, but no barium or antimony in the tested swabs. He explained this absence by the fact that different gunpowder manufacturers used different formulae in making powder and if more lead was present, that ratio might overshadow evidence of barium or antimony as to ob-

scure their appearance in a chemical test. It was his opinion, however, that the test indicated guns had been fired from the car.

Blair explained the presence of gunpowder with the contention he had shot "groundhogs" from his car several times.

Blair and other police officers were required to turn over weapons they had. The one shell found at the scene had markings indicating that it had once been chambered and extracted from one of Blair's guns, but was not shot from *that* gun. The firing pin mark on the shell was different from the mark made by the gun Blair had turned over to the police for testing, but the extractor marks matched those from the tested gun.

A Betty Houchins, Blair's girlfriend, told the Grand Jury that Blair had told her he was stopped in the West End.

In further investigation, police talked to a Sandra Stacey, a dancer in a downtown bar called the Rooster Tail. She had seen Blair, Carpenter, and Borders in the Rooster Tail until about 11 or 11:30 and had sat at their table. When she went home, across the river in Indiana, she told investigators that she saw all three officers at Gargotto's Liquor Store about 3 a.m. (Blair was coming out and the other two officers were in the car.)

However, at trial, she denied saying she saw Carpenter and Borders and only admitted seeing Blair.

Sergeant Browder, in further investigating the incident, interviewed an officer Dickinson. Dickinson told him that Blair, Borders, Carpenter, and Dickin-

son had attended an FOP meeting at Ramada Inn and had drunk beer there. All four then went to a tavern called Willow Lake in Anchorage (suburb of Louisville) where they drank more beer and played pool. Blair, Carpenter, and Borders decided to go downtown to the Rooster Tail, but Dickinson who had to work the next day wanted to be taken home. (He had no transportation and had come to the FOP meeting with one of the other officers.) Blair, the driver, refused to take Dickinson home. He was abandoned on the Watterson Expressway. He called his wife, who took him home.

Blair admitted being at the Rooster Tail with the other two men ,Carpenter and Borders), but said that he and Borders went to another bar, called the Fish Bowl, on Preston Street (many miles from the West End) and was there about the time of the shootings in the West End. No one testified to seeing them at the Fish Bowl.

Carpenter testified he went home around 11:30 from the Rooster Tail and borrowed some phonograph records from a neighbor in his apartment building (the neighbor was another police officer) around the time of the shootings.

Borders originally told investigating officers that he had passed out at the Willow Lake Tavern in his car and woke up around 3 a.m. and went home, but upon being confronted with the statements of the other officers that he had left Willow Lake and gone downtown to the Rooster Tail, he admitted lying, but explained his reasons as fear that his wife would find out about his escapade downtown. He testified that he

went downtown to the Rooster Tail, left with Blair for Preston Street at the Fish Bowl, returned to his car at Willow Lake Tavern, passed out, woke up at 3:30 or 4 a.m., and went home.

All three defendants denied at trial being in the West End during the shootings there.

The defendants filed a motion for a directed verdict at the close of the Commonwealth's evidence, which was denied. They then put on evidence by their own testimonies and testimony of witnesses, such as alibi witnesses, and those who testified to having shot "groundhogs" from Blair's car. THEY DID NOT MAKE MOTIONS FOR DIRECTED VERDICTS AT THE CLOSE OF ALL THE EVIDENCE.

REASONS FOR DENYING THE WRIT

I.

Blair's Petition Is Now All But Moot.

II.

There Are No Constitutional Issues Present, Only a Legitimate Application of State Law.

III.

There Was Sufficient Evidence Upon Which Petitioners Could Be Convicted by a Jury and Which Meet Constitutional Standards.

I.

Blair's Petition Is All But Moot.

After Blair's appeal to the Court of Appeals and while the case was pending on a motion for discretionary review to the Supreme Court of Kentucky, Blair voluntarily surrendered himself to begin service of his one-year penitentiary sentence. He was paroled on December 17, 1979, and the maximum expiration date of his sentence is July 8, 1980. Assuming he does not violate the terms of his parole, he cannot be reincarcerated for the present crime after that date. See attached certificate of Bureau of Corrections.

By the time this Court may review his petition filed herein, the sentence will have already been served, either in prison or on parole. Should this Court decide to grant the petition and order a new trial or free him for lack of evidence, the Commonwealth could not make Blair serve any additional time. In short, the matter

of his sentence and incarceration will be moot. To grant the writ under such circumstances will be an empty gesture. On this ground alone, Blair's petition should be denied.

II.

There Are No Constitutional Issues Present, Only a Legitiate Application of State Law.

All three petitioners, Blair, Carpenter, and Borders assert that the Kentucky Supreme Court applied its procedural rules retroactively and in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Blair asserts that such procedural application is retroactive and in violation of constitutional prohibitions against the enactment of ex post facto laws in violation of Article I, sections 9 and 10.

The Supreme Court of Kentucky, in its final opinion, determined that it would not review the issue of the sufficiency of the evidence against any of the three petitioners here because none of them made a motion for a directed verdict at the close of all the evidence in the light of that Court's ruling in *Kimbrough* v. *Commonwealth,* Ky., 550 S .W. 2d 525 (1977).

> In that case, the Kentucky Supreme Court stated:
> "A motion for a directed verdict made at the close of the plaintiff's (here the Commonwealth's) case is not sufficient to preserve error unless renewed at the close of all the evidence, because once the defense has come forward with its proof, the propriety of a directed verdict can only be tested in

> terms of *ALL* the evidence. If there has been no motion for a directed verdict at the close of all the evidence, it cannot be said that the trial judge has ever been given an opportunity to pass on the sufficiency of the evidence as it stood when finally submitted to the jury. In effect, therefore, a motion for directed verdict made only at the close of one party's evidence loses any significance once it is denied and the other party by producing further evidence, chooses not to stand on it." (550 S. W. 2d at 529)

Here, all petitioners, Blair, Borders, and Carpenter put on additional evidence when their original motions for directed verdict made at the close of the Commonwealth's direct evidence were denied. Blair testified as to where he went during the night and early morning of March 30-31, 1976. He testified he had shot guns from his car at groundhogs (this was to explain the evidence of gunpowder residue on his vehicle). He put on other officers who testified they had gone groundhog hunting with him.

Borders testified he had passed out in his car at Willow Lake Tavern in Anchorage and could not have been in the West End of Louisville. Carpenter testified he went home from the Rooster Tail bar and listened to phonograph records with his girlfriend and borrowed some records from a neighbor police officer. That officer also testified.

A great deal of evidence was put on after the initial motions for directed verdict.

All petitioners complain that the Kentucky Court's application of law in *Kimbrough, supra,* was a sur-

prise and a retroactive application to their case (they were tried June 28, 29, 30, July 1, 2, 1976; *Kimbrough's* opinion was first rendered April 1, 1977), that such application was ex post facto.

First of all, we need point out that Article 1, Section 9, provides, in part, that "No . . . ex post facto law shall be passed" and Section 10 provides, in part, "No state shall . . . pass any . . . ex post facto law. . . ."

The Constitutional provisions aforesaid were pointed to the Legislative bodies (Congress or a state legislature), not to its courts. But we are aware that this Court has, by judicial interpretation, precluded a state court from achieving the same end via *Bouie* v. *City of Columbia,* 378 U. S. 347, 12 L. Ed. 2d 894, 84 S. Ct. 1697 (1964).

But, we submit that the Kentucky Supreme Court's rule in *Kimbrough, supra,* was not an ex post facto application of law, or was not new. It merely reiterated prior law on the subject.

For, as early at 1928 in *Delong* v. *Commonwealth,* 225 Ky. 461, 9 S. W. 2d 136, and in *Harvey* v. *Commonwealth,* Ky., 423 S. W. 2d 535, 537 (1968), the appellate court dealt with the issue.

The *Kimbrough* ruling was certainly not new law as far as federal courts were concerned. For example, it was utilized in *United States* v. *Black,* 525 F. 2d 668, 669 (6th Cir., 1975), and even this court considered the matter in *United States* v. *Colderon,* 75 S. Ct. 186, 348 U. S. 160, 99 L. Ed. 2d 202 (Ariz., 1954) where, in a footnote, the Court noted that:

> "[B]y introducing evidence, the defendant waives his objection to the denial of his motion to acquit [citing cases]. His proof may lay the foundation for otherwise inadmissible evidence in the Government's initial presentation . . . or promote corroboration or essential elements of the Government's case. . . ."

So, petitioners cannot twist EX POST FACTO to cover the facts in these cases. *Kimbrough* was not new law, but a reaffirmation and a rephrasing of prior, existing law.[1]

Carpenter and Borders argue that the Kentucky Supreme Court's reliance on *Kimbrough* for its refusal to consider the sufficiency of the evidence is a restrictive, too technical approach to an issue of constitutional proportions, that issue being that a person may not be convicted except upon good and sufficient evidence.

As supportive of their contention that the Court should consider certiorari, they cite *In Re Winship*, 397 U. S. 358 (1970), and *Jackson* v. *Virginia*, —— U. S. ——, 61 L. Ed. 2d 560 (1979). However, we submit that neither of those cases reached or dealt

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[1]Kentucky Criminal Rule (RCr) 9.54(2) provides: "No party may assign as error the giving or the failure to give an instruction unless he has fairly and adequately presented his position by an offered instruction or by motion, or unless he makes objection before the court instructs the jury, stating specifically the matter to which he objects and the ground or grounds of his objection."

This provision was in effect as of March 1, 1974, two years before petitioners' trial.

A motion for a directed verdict after all the evidence has been introduced is a motion for a peremptory instruction to the jury. So *Kimbrough* did not *create* law. The law was already there.

with the issue here presented. They were concerned with the quantum of evidence necessary to convict a defendant in a criminal case for constitutional purposes.

But, here the issue is—did these petitioners preserve the question of the quantum of evidence by not properly raising the issue in the trial court?

Implicit in their argument is the belief that the question concerning the quantum of evidence necessary to convict must *always* be available and must *always* be considered by an appellate court regardless of what transpired procedurally in the trial court, that an appellate court is *always required* to consider such an issue, whether it has been procedurally preserved or not, as a matter of original jurisdiction. And, why does such an issue preclude any procedural foreclosure to its consideration? Because it is *constitutionally* impermissible to convict a defendant on less than sufficient evidence (in the minds of petitioners).

Thus, distilled to its barest essentials, that is what we understand to be all petitioners' positions.

But, the fact that it is alleged that an issue raised has constitutional import does not preclude the necessity of preserving the issue properly. After all, every case filed in this Court, via certiorari, alleges that a constitutional issue is present. Without the allegation of such an issue, this Court would lack jurisdiction to consider it.

There are many constitutional rights, the right to counsel, the right to trial by jury, the right of confrontation of witnesses. Each of these rights can be waived by failure to present the issue, either by motion

or objection. The right to appeal (if a state affords an appeal) can be waived by failure to take the necessary action prescribed by rule or statute for effectuating such an appeal.

Every one of these constitutional rights involve the application of an orderly rule procedure for presenting those issues to a court.

The issue of whether a constitutional right must be considered by a state court despite failure to preserve the issue at the trial level has been considered by this Court in *Wainwright* v. *Sykes,* 433 U. S. 72, 53 L. Ed. 2d 594, 97 S. Ct. 2497 (1977). In that case, *Sykes* challenged a confession which was admitted at trial as in violation of *Miranda* v. *Arizona,* 384 U. S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602, but his challenge did not occur contemporaneous to the trial or at the time the inculpatory statements were introduced in evidence. He did not object until he filed a motion to vacate his conviction and failed there. He then filed a federal habeas corpus action pursuant to 28 U.S.C. Sec. 2254.

Although this case does not arise via habeas corpus, but appears via certiorari, the rationale as set out in *Wainwright* is still applicable here.

A "contemporaneous objection" rule permits the objection (or motion, as in the case here) to be made when the matter is freshest, not years later. It permits the trier of fact, the trial court, to consider and perhaps reject insufficient evidence precluding the necessity of an appeal or a collateral action at a later time.

The state trial should be the "main event" rather than a "tryout on the road." For, if a defendant can

ignore the procedural requirements, and wait until the appeal or until a collateral action is filed, it reduces the trial to a minor "bit player" in the judicial march to final determination of criminal justice.

On appeal, the defendant can ignore the trial court and request the appellate court to consider what it did not ask the trial court to consider. How can the appellate court determine that the trial court was in error, or abused its discretion, when the trial court was not given the opportunity to make the proper decision in the first place?

So, there is more than mere unnecessary procedural rules here. The rules requiring that for an appellate court to consider the sufficiency of the evidence, there must be a motion attacking such evidence after all the evidence is in, has a salutary and important state purpose.

That purpose is to provide an orderly, proper method for a trial judge to determine, before the case has finally been submitted for jury decision, to evaluate whether it should be submitted in the first place. For, if the judge can determine that evidence is insufficient, there will be no need to go farther and clog the judicial machinery with an expensive, time-consuming, and unnecessary jury decision which could be reversed upon appeal. Such a motion properly filed and ruled upon frees the defendant from further trial. He is set free immediately.

However, if a defendant can bypass the procedural rule requirement, why make it or require it in the first place? If the courts determine that it is unnecessary

to use the rule, defendants will not bother to preserve the issue or use the rule. They can await a guilty verdict and then only on appeal, or collaterally via habeas assert the claim. Such a determination can only result in what *Wainwright* seeks to prevent, a dilution of the importance of the initial trial, the trial court, and the trial judge.

So, we submit that there are no constitutional issues which justify the granting of a writ of certiorari; there are only state procedural issues, the failure to preserve a contention on appeal by a proper motion contemporaneously at the trial level. A state's highest court may require as a matter of state law that in determining whether it will review an issue, that issue must first be preserved by proper motion at the trial level.

And, it may do so, even though the issue allegedly is one of constitutional import. If it cannot require that, we will eventually have to abandon state courts and state judicial determinations and require all trials to emanate from the federal courts.

For, it follows as night follows day, that if this Court determines that constitutional issues can be reviewed and considered despite failure to preserve the issues asserted contemporaneously and in the manner prescribed by state law, that all issues will become constitutional issues (or at least asserted to be constitutional issues) in order to bypass the failure to use proper state rules for reaching the issue by the state judiciary.

Therefore, we submit there is no constitutional issue deserving of the granting of writs of certiorari to these

petitioners. They are asking this Court to do what they did not ask the state trial court to do, when they should have asked it.

III.

There Was Sufficient Evidence Upon Which Petitioners Could Be Convicted by a Jury and Which Meet Constitutional Standards.

Petitioner's basic argument, after dealing with the preservation issue, is that there was insufficient evidence upon which a "trier of fact could have found the essential elements of the crime beyond a reasonable doubt" as iterated in *Jackson* v. *Virginia, supra.*

This is the evidence against them:

1. A series of shootings were occurring in the West End of Louisville on March 30-31, 1976, in which two black bars, a liquor store, and several automobiles were shot into.

2. At one of the bars, a waitress was hit in the brain, the shot causing her blindness and mental incompetency.

3. While investigating the shooting in one bar and receiving a call of a shooting occurring then at another bar several streets away, bystanders told Sergeant Giuchici (one of the investigating officers) they heard shots right then down Magazine Street. He proceeded in the direction of the sound, saw a car with its lights off coming toward him. The car had a similar description to that given by bystanders as appearing to be a brown, unmarked police car.

4. He stopped the car and recognized Blair who said to him, "What's up Pete?" He noticed two other white males in the car and a shotgun in the front seat.

5. Upon further thought, he checked Blair's duty roster and found out he (Blair) was off duty that night (and should not have been in the vicinity at the time).

6. A spent shotgun shell found in the street of one of the bar shootings was determined to have been extracted (from expert ballistic testimony) from a shotgun turned over for testing by Blair, but had not been shot from that gun (the firing pin mark came from another gun not turned over for testing). The gun that shot the shell was not recovered for testing, but the shell had once been in a gun belonging to Blair, and that shell was connected directly to the shooting incident.

7. The next day, Blair called to advise his superiors (while off duty) that he was available for questioning at his attorney's office.

8. The police went there and saw his car (brown with similar description to the vehicle which had been seen from which the shots came and similar to the one he was seen in by Sergeant Giuchici). They requested permission to search and took the car to police headquarters because it was beginning to rain. It was there that swabs treated with chemical material were taken of various portions of the car.

9. Experts testified the swabs indicated positive for lead (but not antimony or barium) sufficient in the expert's opinion to be evidence that gunpowder had been on the car (Harrison-Gilroy test).

10. Blair told Sergeant Browder while with his attorney, that he had a good reason to be there (the West End). At trial, he denied making this statement or of being in the West End.

11. Blair's girlfriend told the grand jury that when she awoke on March 31, 1976, Blair was sleeping on her couch and told her he had been stopped in the West End.

12. All three men, Blair, Borders, and Carpenter, were together at Ramada Inn at an FOP meeting up to about 8-8:30 p.m. on March 30, 1976.

13. All three and another (Dickinson) went to Willow Lake Tavern. They were seen together.

14. Dickinson testified they intended to go down town (the West End was within 2-3 miles of downtown) to the Rooster Tail Bar. He was abandoned at Watterson Expressway; the other three were still in the car.

15. All three—Blair, Borders, and Carpenter—were drinking together downtown in the Rooster Tail. One of the trio had called police on duty to look into some underage boys who were attempting to be served alcohol in the Rooster Tail and were creating a disturbance.

16. The police radio had the call monitored and noted.

17. All three left the Rooster Tail about 11-11:30 p.m., March 30, 1976.

18. A go-go dancer (Sandra Stacey) told investigating officers, as she was going home across the bridge to Indiana, she saw Blair *with* Carpenter and Borders

about 3:30 a.m., on March 31, 1976. Blair was coming out of Gargotto Liquor Store and entering his car containing the other two men (Borders and Carpenter) that she saw earlier that night at the Rooster Tail. However, at trial, she denied making the statement, that she only saw *Blair*.

19. Borders lied to investigating officers, and said he had passed out at Willow Lake Tavern when the other three (Carpenter, Blair, and Dickinson) had left. Dickinson said they left together. Borders was seen at the Rooster Tail. He then admitted it was a lie and that he did go to the Rooster Tail, but left with Blair to go to Preston Street to the Fish Bowl (no one testified to seeing either of them there).

So, there is evidence Blair was in the vicinity of the shootings when they occurred in suspicious circumstances. His car was similar in appearance to the car seen from which shots came. A shell found at the scene had been in his gun. There was fresh evidence the day after the shooting that gunpowder had been shot from his car. He had been with the other two officers both before and after the time of the shooting and he had been seen with two other white men in a car at the scene of the shooting.

All of these bits of evidence were individual bricks which unerringly pointed to petitioners' guilt. A single brick, by itself, does not make a structure, but when placed together with other single bricks in proper juxtaposition make a house, a store, or an impressive building.

With the evidence presented, including the petitioners' denials (which the jury was not required to believe) "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson* v. *Virginia, supra.*

So, despite these petitioners' contentions, there was presented evidence of their guilt sufficient to meet the requirements of the Constitution. They were lucky that the jury (who also determined their punishment) was as lenient as it was and gave them only one year imprisonment, considering the seriousness of the injuries they created by their criminal activity.

There are no constitutional issues worthy of consideration by this Court, only a proper determination by a state court of state law. The petitions should be denied.

Respectfully submitted,

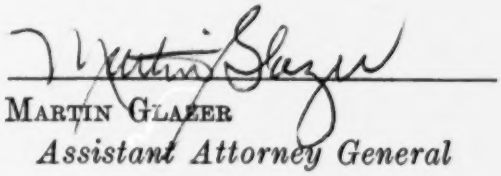
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PROOF OF SERVICE

I, Martin Glazer, counsel for the Respondent, hereby certify that three (3) copies of the foregoing Respondent's Brief in Opposition were mailed, postage prepaid, this 30th day of June, 1980, to Hon. John Tim McCall, 200 Hart Block Building, 730 West Main Street, Louisville, Kentucky 40202, Counsel for Petitioner, Jerome C. Blair; Hon. Frank E. Haddad, Jr., 529 Kentucky Home Life Building, Louisville, Kentucky 40202 and Hon. Robert E. Fleming, 1509 Citizens Plaza, Louisville, Kentucky 40202, Counsel for Petitioners, Richard Carpenter and Stephen Borders.



MARTIN GLAZER
Assistant Attorney General

APPENDIX

BLACKBURN CORRECTIONAL COMPLEX

NOTICE OF DISCHARGE

F. B. I. No. _____

F. P. C. DOB 44-9-15 ORIG. NO. 81665-L

LEXINGTON, KY 12-17-79

The following named prisoner whose commitment record appears below is this day being discharged from this Institution.

Name BLAIR, JEROME Number 3079-B

Date Received ORIG. 79-7-10 BCC 79-8-6 County JEFFERSON

Crime WANTON ENDANGERMENT 1st DEGREE

Sentence 1 YEARS

Discharged PAROLED

Remarks MAX. JULY 8,1980

_____ Superintendent _____

By _____ C. C.

We certify that the above named prisoner has this date been discharged on record of our office.

Chief Records Clerk Bobbi Wait

Associate Superintendent Mike O'Dea III

CERTIFICATE

I, Betty Lou Vaughn, certify that I am Supervisor of Offender Records, Bureau of Corrections, Department of Justice, Commonwealth of Kentucky and that in my official capacity all offender records of the Bureau of Corrections are maintained and in my custody and that the foregoing is a true and accurate copy of the Notice of Discharge contained in the inmate file on Jerome Blair 3079-B (81665-L).

Betty Lou Vaughn

Betty Lou Vaughn, Supervisor of Offender Records

I, a Notary Public in and for the State of Kentucky do certify that the foregoing instrument was produced before me by Betty Lou Vaughn, Supervisor of Offender Records, Bureau of Corrections, Department of Justice, Commonwealth of Kentucky on this 2nd day of June, 1980 and signed by her in my presence.

Valerie H. Coleman

Notary Public, State of Kentucky

My commission expires June 19, 1983